IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1111 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RATANLAL JUGALKISHOR NAI

Versus

DY POLICE COMMISSIONER

Appearance:

MR MAHENDRA K PATEL for Petitioner

MR KT DAVE, APP for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/03/2000

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on October 12, 1999, in exercise of powers under section 56 of the Bombay Police Act ("the Act" for short), externing the petitioner from the areas of Police Commissionerate, Ahmedabad City and contiguous districts of Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana for a period of two years.

#. Prior to passing the order, the proposed externee was served with a notice as required under section 59 of the Act for showing the case as to why he should not be externed. It has been stated in the notice that he is indulging in criminal activities which are detrimental to public order since January, 1999.

#. The order was passed after conducting the proceedings for externment and the same was challenged before the appellate authority contemplated under section 60 of the Act. The appellate authority, after hearing both the sides, dismissed the appeal, which has given rise to the present petition preferred by the externee on various grounds. Mr. Patel, however, restricted his arguments to the ground of delay in passing the order and consideration of extraneous material. He submitted that the last witnesses was examined on August 9, 1999 and the order is passed on October 10, 1999. He stated that although it is stated in the show cause notice that the petitioner is engaged in nefarious activities since January, 1999, no offence is registered against him in the year 1999. The only offence registered against him is in 1998 which has been considered by the externing authority, and therefore, the order may be quashed and set aside on the ground of delay as causal connection is snapped between the incident and the order.

#. Mr. K.T. Dave, learned APP has opposed this petition. He submitted that the incidents alleged in the notice are the substance of the allegation made against the petitioner and the statements of about 12 witnesses are recorded which indicate activities of the externee. He, therefore, urged that the petition may be dismissed.

#. Having regard to rival side contentions, the most prominent factor that emerges is that the order is passed after a lapse of about two months from the recording of

evidence of last witness on August 9, 1999. The externment orders are passed with a view to immediately preventing the petitioner from pursuing his activity. This delay in passing the order indicates that the need recorded by the externing authority is not genuine and therefore, the order would stand vitiated. It also requires to be observed that during 1999, no offence is registered against the petitioner. The externing authority has stated that the activities are started since January, 1999 and no offence is registered against the externee. There is no dispute about the same. The externing authority has not filed any affidavit-in-reply to explain the delay or to indicate the factors which went to indicate involvement of the petitioner in nefarious activities after January, 1999. Under the circumstances, the externment cannot be supported and deserves to be quashed and set aside.

#. In view of the above discussion, the petition is allowed. The impugned orders of externment dated 12th October, 1999 passed by respondent no.1 and dated 6th December, 1999 passed by respondent no.2 are hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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